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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------|------------------|
| 10/661,014 | 09/11/2003 | Brennon L. White | 026032-4429 | 6793 |
| 26371 | 7590 | 06/03/2004 | EXAMINER | |
| FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308 | | | BARFIELD, ANTHONY DERRELL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|---------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/661,014 | Applicant(s) WHITE ET AL. | |
| | Examiner Anthony D Barfield | Art Unit 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2,4-6,8-25, and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Feher. Feher shows a ventilated seat assembly for use with an air mover comprising: a seat having a generally horizontal cushion and a backrest (see Fig. 14), at least one of the horizontal cushion and the backrest being ventilated and including: an air-permeable decorative exterior trim cover (50); a bag (32,34, 42,44) including an air-impermeable top (44), an air- impermeable bottom (32), and an opening (54) configured to be coupled to an air mover, the bag top including a plurality of holes (46) arranged and sized to provide air movement through the bag; and a spacer (36) located within the bag; wherein some of the holes are located nearer the bag opening than other holes and each hole has a cross-sectional area, the holes located substantially the same distance from the bag opening forming a group having a total cross-sectional area, the bag including more than one group of holes, the total cross- sectional area of each group of holes being greater than the total cross-sectional areas of any groups of holes nearer the bag opening (as shown in Fig. 4). Feher shows that the top of the bag comprises an inner resin impermeable film layer (42) and an outer of covering of an elastomer (foam) (44). The opening would inherently be "configured" for a fan via the air conditioner of the vehicle and a suction air mover of variable speed as it is inherent that most vehicles have range of high/low or fast/slow

Art Unit: 3636

associated with the air conditioner unit. Furthermore the holes near the opening have a smaller total cross section as there are fewer holes, as shown in Fig. 4, than the holes further away from the opening.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feher in view of Gendron. Feher shows all of the teachings of the claimed invention except the use of a spacer comprising upper and lower layers adjacent the respective top and bottom of the bag. Gendron shows the use of a spacer comprising an upper (73) and lower (74) layer having a plurality of fibers (75) therebetween. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the spacer of a Feher with the spacer, as taught by Gendron, in order to provide added strength and support. Furthermore it would have been an obvious matter of design choice to modify the fibers from a plastic material since applicant has not disclosed that plastic fibers solves any stated problem and it appears that the fibers of Gendron would perform equally well.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feher in view of Wyon et al. Feher shows all of the teachings of the claimed invention except the use of an electrical heater between the exterior trim cover and top of the bag. Wyon et al. shows the

Art Unit: 3636

conventional use of an electrical heater between a trim layer (2) and a top of a bag (6). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the seat of a Feher with the electrical heater, as taught by Wyon et al., in order to provide added warmth and comfort to an occupant.

6. Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feher. Feher shows all of the teachings of the claimed invention except a change in size of holes from the first group of holes nearer the opening and the second group further away from the opening. It would have been an obvious matter of design choice to modify the size of the holes since it has been held that a mere change in size is of ordinary skill in the art. *In re Rose* (CCPA 1955).

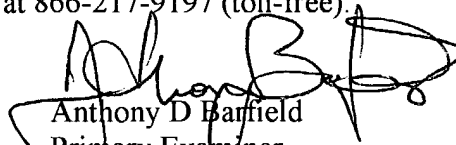
Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference 3,137,523, 6,068,332, and 6,629,725 show features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Barfield whose telephone number is 703-308-2158. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony D Barfield
Primary Examiner
Art Unit 3636

adb